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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,558	05/16/2001	Robert W. Tuttrup	2280.2710	1522

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NEW YORK, NY 10112

EXAMINER
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FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/855,558

Applicant(s)

TUTTRUP ET AL.

Examiner

Mark Fadok

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The examiner is in receipt of applicant's response to office action mailed 8/11/2004, which was received 2/11/2005. Acknowledgment is made to the amendment to claims 1,3,5,9,13,17,22,26, and 31, leaving claims 1-34 as pending in the instant application. The examiner has carefully considered the applicant's remarks and amendments and finds them to be persuasive. Therefore the USC 101 rejection has been obviated. However, after further searching a new grounds of rejection on the merits is provided below:

### **Examiner's Note**

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***USC 112 Sixth Paragraph Notification***

Applicant has provided means-plus function language in the instant claims, which could be construed as having a narrower meaning emanating from specific embodiments found in the specification. Since it is the applicant's responsibility to invoke USC 112 6<sup>th</sup> paragraph, the examiner will treat the claims using the broadest reasonable interpretation unless the applicant responds to the office action invoking USC 112 6<sup>th</sup> paragraph and identifying the exact limitations that the applicant is reading into the claims from the specification. Please be advised that should the applicant invoke USC 112 6<sup>th</sup> paragraph in response to this office action the response may still be made final using the rationale that the applicant has added new subject matter to the claims. A lack of response to this notice will be construed as prosecution history estoppel indicating that the applicant does not wish to invoke USC 112 6<sup>th</sup> paragraph.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia (6,728,685) in view of Official Notice.**

**In regards to claim 1**, Ahluwalia discloses a method for delivering goods ordered by a plurality of customers (Abstract), comprising the steps of :

a plurality of customers placing orders for goods from a vendor maintaining a server on a network (FIG 3);

for an order placed by a given customer, the vendor server determining whether an ordered good is currently available at a local pick-up point geographically close to the given customer (FIG 5):

Ahluwalia teaches determining if a product is available at a local dealership (col 7, lines 5-15) and if not having the vehicle shipped to the customer selected dealership for sale to the consumer (col 8, lines 10-30, col 18, lines 40-50) specifically mention that the vehicles are combined with other customer orders to the selected dealership. I was old and well known in the art at the time of the invention to consolidate shipments from manufactures to car dealerships. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Ahluwalia the consolidation of orders into one shipment to a dealer, because this has been a notoriously well known means for optimizing the usage of a vehicle transport trailer where numerous vehicles shipped to a dealer at one time. Motivation can be found in the ability to save shipping cost and time by not having to unload numerous trucks delivering one vehicle at a time to a dealership.

the vendor causing the single shipping order to be sent to a the local pick-up point (col 19, lines 1-20)

**In regards to claim 2**, Ahluwalia teaches wherein the goods are ordered via the Internet (FIG 3)

**In regards to claim 3**, Ahluwalia teaches notifying the given customer when the order is available for pick-up (FIG 2, status tracking)

**In regards to claim 4**, Ahluwalia teaches wherein a customer or customer's agent retrieves a collection of goods from the vendor from the local pick-up point (col 19, lines 5-0)

**In regards to claim 5**, Ahluwalia discloses a method for designating local receipt of items ordered from a vendor at a remote location comprising the steps of

the customer placing an order for at least one item via a sever maintained by a vendor on a network;

the customer providing to the vendor the customer's location via the vendor server;

the customer choosing a local pick-up point from among local pickup points offered by the vendor (FIG 26A, selected dealer, item 1655)

the vendor server determining whether the at least one item is currently available at the chosen local pick-up point and in a case where it is not fulfilling the order by delivering the at least one item to the chosen local pick-up point; and

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upon receipt of the at least one item at the local pickup point, the customer receiving notification that the order is available for pick-up (see response to claim 1)

**In regards to claim 6**, Ahluwalia teaches wherein the designation is done via the Internet (see response to claim 2)

**In regards to claim 7**, Ahluwalia teaches a step of the customer or customer's agent retrieving a collection of goods from the vendor from the local pick-up point (see response to claim 4)

**In regards to claim 8**, Ahluwalia teaches the customer selecting from among options relating to the pick-up point customized on the basis of the type of items ordered, and/or the pick-up capability of the customer (selection of vehicles that are Mercury would be picked up at a Mercury dealership, vehicles that are Jeep would be picked up at a jeep dealership).

**In regards to claim 9**, Ahluwalia discloses a method for delivering goods ordered by a plurality of customers, comprising the steps of.

a plurality of customers placing orders for goods from a plurality of vendors via servers maintained by the vendors on a network;

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for an order placed by a given customer, each vendor fulfilling the order by determining via the respective vendor server if the goods are currently available at a local pick-up point geographically close to the given customer, and

in a case where the goods are not currently available combining the given order into a single shipping order with goods ordered by those from among the plurality of customers who are geographically close to respective local pick-up points; and

the vendors causing the respective shipping orders to be sent to the respective local pick-up points (see response to claim 1).

**In regards to claim 10**, Ahluwalia teaches wherein a customer or customer's agent retrieves a collection of goods from one or more of the plurality of vendors from the local pick-up point (see response to claim 4).

**In regards to claim 11**, Ahluwalia teaches wherein the orders are placed via the Internet (see response to claim 2).

**In regards to claim 12**, Ahluwalia teaches the customer selecting from among options relating to the pick-up point customized on the basis of the type of items ordered, and/or the pick-up capability of the customer (see response to claim 11).

**In regards to claim 13**, Ahluwalia discloses an apparatus for controlling delivery of goods to a plurality of customers, the apparatus comprising:



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means for receiving orders from a plurality of customers; means for determining, whether an ordered good is currently available at a local pick-Q point geographically close to an ordering customer;

means for fulfilling the ordering customer's order by in a case where the ordered good is not currently available at the local pick-up point,

combining the order into a shipping order with goods ordered by those from among the plurality of customers who are geographically close to respective local pick-up points; and

means for causing the respective shipping orders to be sent to respective local pick-up points (see response to claim 1).

**In regards to claim 14**, Ahluwalia teaches wherein the orders are received via the Internet (see response to claim 2).

**In regards to claim 15**, Ahluwalia teaches wherein a customer or customer's agent retrieves a collection of goods from the local pick-up point.

**In regards to claim 16**, Ahluwalia teaches means operable to allow the customer to select from among options relating to the pick-up point customized on the basis of the type of items ordered, and/or the pick-up capability of the customer (see response to claim 4).

**In regards to claim 17**, Ahluwalia discloses a system, having multiple vendors, for allowing the multiple vendors to consolidate shipping of goods to customers, each vendor having an apparatus comprising:

means for receiving orders from a plurality of customers;

means for determining whether ordered goods are currently available at local pick-up points geographically close to ordering customers;

means for fulfilling the customers' orders by, in those cases where ordered goods are not currently available at geographically close local pick-up points combining into individual shipping orders the goods ordered by those from among the plurality of customers who are geographically close to respective local pick-up points; and

means for causing the respective shipping orders to be sent to the respective local pick-up points (see response to claim 1).

**In regards to claim 18**, Ahluwalia teaches wherein the multiple vendors' apparatuses are connected on a network (see response to claim 2).

**In regards to claim 19**, Ahluwalia teaches wherein the network is the Internet (see response to claim 2).

**In regards to claim 20**, Ahluwalia teaches wherein a customer or customer's agent retrieves a collection of goods from the respective local pick-up point (see response to claim 4).

**In regards to claim 21**, Ahluwalia teaches wherein each vendor's apparatus further comprises:

means operable to allow the customer to select from among options relating to the pick-up point customized on the basis of the type of items ordered, and/or the pick-up capability of the customer (see response to claim 8).

**In regards to claim 22**, Ahluwalia discloses a shopping server on a network including a plurality of vendor servers and a plurality of customer client terminals, the shopping server being operable to:

receive orders from a customer terminal for purchase of a good;

communicate with one of the a plurality of local pick-up points in proximity to the customer who ordered the good, to determine if the ordered good is currently available at the local pick-up point; and

if the good is not currently available at the local pick-up point, communicate with one of the vendor servers to initiate delivery of the ordered good to the local pick-up point (see response to claim 1).

**In regards to claim 23**, Ahluwalia teaches wherein the network is the Internet (see response to claim 2).

**In regards to claim 24**, Ahluwalia teaches wherein a customer or customer's agent retrieves a collection of goods from the local pick-up point (see response to claim 4).

**In regards to claim 25**, Ahluwalia teaches wherein the server is further operable to:

allow the customer to select from among options relating to the pickup point customized on the basis of the type of items ordered, and/or the pick-up capability of the customer (see response to claim 8).

**In regards to claim 26**, Ahluwalia discloses a system, having multiple vendors, for allowing the multiple vendors to consolidate shipping of goods to fulfill customer orders received over a network, each vendor having a network server operable to:

receive orders from a plurality of customers;

determine whether ordered goods are currently available at local Pick-up points geographically close to ordering customers;

fulfil the customers' orders by, in those cases where ordered goods are not currently available at geographically close local pick-up points,

combining into individual shipping orders the goods ordered by those from among the plurality of customers who are geographically close to respective local pick-up points; and

cause the respective shipping orders to be sent to the respective local pick-up points (see response to claim 1).

**In regards to claim 27**, Ahluwalia teaches wherein the network is the Internet (see response to claim 2).

**In regards to claim 28**, Ahluwalia teaches the network server being further operable to:

coordinate with the multiple vendors so as to arrange for shared shipping of ordered goods when respective ones from among the multiple vendors have received orders to be sent to the identical local pick-up points (FIG 7A and 7B).

29. (original) A system according to Claim 26, wherein a customer or customer's agent retrieves a collection of goods from the local pick-up point (see response to claim 4).

**In regards to claim 30**, Ahluwalia teaches the network server being further operable to allow the customer to select from among options relating to the pick-up point customized on the basis of the type of items ordered, and/or the pick-up capability of the customer.

**In regards to claim 31**, Ahluwalia discloses Computer code storable on a computer readable medium and executable on a network server, said code comprising: code for receiving orders from a plurality of customers;

code for determining whether an ordered good is currently available at a local pick-up point geographically close to the ordering customer:

code for fulfilling the ordering customers order by in a case where the ordered good is not currently available at the local pick-up point,

combining the order into a shipping order with goods ordered by those from among the plurality of customers who are geographically close to respective local pick-up points; and

code for causing the respective shipping orders to be sent to respective local pick-up points (see response to claim 1).

**In regards to claim 32**, Ahluwalia teaches wherein the network is the Internet (see response to claim 2).

**In regards to claim 33**, Ahluwalia teaches wherein a customer or customer's agent retrieves a collection of goods from the local pick-up point (see response to claim 4).

**In regards to claim 34**, Ahluwalia teaches code to allow the customer to select from among options relating to the pick-up point customized on the basis of the type of items ordered, and/or the pick-up capability of the customer (see response to claim 8).

***Response to Arguments***

Applicant's arguments with respect to claims 1-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

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**Alexandria, Va. 22313-1450**

or faxed to:

**(703) 872-9306** [Official communications; including

After Final communications labeled

"Box AF"]

**(571) 273-6755** [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal flourish extending to the right.

Mark Fadok

Patent Examiner